



U.S. POSTAL REGULATORY COMMISSION  
Washington, DC 20268-0001

Office of the Secretary

November 7, 2012

Congressman Henry A. Waxman  
8436 West Third Street, Suite 600  
Los Angeles, CA 90048-4183

Re: Appeal of the Postal Service's Determination to Close the Santa Monica Post  
Office, Santa Monica, California, Docket No. A2013-1

Dear Congressman Waxman:

Enclosed please find the Public Representative's Response in Support of the  
United States Postal Service Motion to Dismiss proceeding, and a Request of the City  
of Santa Monica to Intervene and Participate in the Appeal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shoshana M. Grove".

Shoshana M. Grove  
Secretary

Enclosure

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

<i>In the Matter of:</i> Santa Monica Post Office Santa Monica, California 90401	Docket No. A2013-1
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**REQUEST OF THE CITY OF SANTA MONICA TO INTERVENE  
AND PARTICIPATE IN APPEAL OF CONGRESSMAN WAXMAN**  
(November 6, 2012)

Pursuant to 39 CFR 3025.14 of the Commission's Rules, and for the reasons detailed below, the City of Santa Monica ("City") hereby seeks to intervene and participate in Congressman Henry A. Waxman's appeal ("appeal") of the United States Postal Service ("USPS") August 17, 2012 decision ("Decision") to approve the closure of the Santa Monica Post Office located at 1248 5<sup>th</sup> Street ("5<sup>th</sup> Street Post Office") and the consolidation of its operations at the Santa Monica Carrier Annex located at 1653 7<sup>th</sup> Street ("Annex Building"). This Decision must be reversed as the USPS failed to proceed in the manner required by Federal law in rendering its decision. Since the 5<sup>th</sup> Street Post Office is located in the City and its closure and consolidation has significant adverse impacts on the City's residents and business community, and the City itself is a customer served by the 5<sup>th</sup> Street Post Office, the City is authorized to intervene and participate in this proceeding.<sup>1</sup>

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<sup>1</sup> The City also joins in Congressman Waxman's request that the Commission suspend any effort to close the 5<sup>th</sup> Street Post Office while this matter is pending.

Despite the USPS's characterization of the Decision as a "relocation," in its efforts to avoid the statutory mandates of 39 U.S.C. §404(d), the Decision clearly results in closure or consolidation of the 5<sup>th</sup> Street Post Office. In challenging the USPS's actions, the City recognizes that the USPS has the power to "determine the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed." 39 U.S.C. §404(a)(3). However, this power must be exercised in accordance with the procedures established by this law. *Id.* This USPS failed to do, since it neither followed the procedures for closing or consolidating the 5<sup>th</sup> Street Post Office set forth in §404(d) nor made the requisite findings under that section. This Commission is required to set aside any determination, findings, and conclusions of the USPS to close or consolidate any post office that are found to be: "**(A)** arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law; **(B)** without observance of procedure required by law; or **(C)** unsupported by substantial evidence on the record." 39 U.S.C. §404(d)(5). Given the USPS's disregard of its statutory obligations, this Commission must set aside the Decision.

The USPS readily admits both in the Decision and in documents it subsequently filed with this Commission that it neither followed the procedures nor made the findings required by §404. As stated, it seeks to avoid the consequences of this failure by improperly characterizing the closure of the 5<sup>th</sup> Street Post Office as a mere "relocation." Had the USPS's action been a mere "relocation," different procedural requirements would have been triggered. See 39 C.F.R. §241.4.<sup>2</sup> However, given the complete cessation of all postal operations at this facility and the USPS's stated

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<sup>2</sup> The City also challenged the decision to close the 5<sup>th</sup> Street Post Office under the procedures set forth at 39 C.F.R. §241.4 while preserving its argument that the §241.4 procedures do not apply. Among its challenges, the City contended that the USPS also failed to follow the §241.4 procedures. In his October 4, 2012 decision rejecting the City's challenge, the Vice President of Facilities failed to address these procedural irregularities and declared that no further administrative or judicial review is available to the City despite the USPS's clear failure to proceed in a manner prescribed by law.

intention to sell this building, the USPS's characterization is plainly erroneous and, as detailed below, counter to established case law.

For instance, in *Knapp v. United States Postal Service*, 449 F.Supp. 158 (E.D. Mich. 1978), plaintiffs challenged the USPS's decision to transfer certain bulk and other sorting operations from certain postal facilities to other facilities without complying with §404(b). In rejecting this challenge, the court explained that: "[c]losing thus refers to the complete elimination of the post office. 'Consolidation,' while more difficult to describe, certainly has the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office." *Id.* at 162. The court thus found that this change did not constitute a closing or consolidation since "due to the continuation of all postal services rendered to the public at each of the post offices in question, the public would not know whether the bulk mail sorting operations were being performed at the post office as was the case, were being transferred to a different facility, or were even being performed on a train enroute to the destination of the mail being sorted as such services were once performed." *Id.*

Similarly, in *Wilson v. United States Postal Service*, 441 F.Supp. 803 (C.D. Cal. 1977), plaintiffs challenged the transfer of certain mail processing functions to a central facility from twenty-six local post offices contending that a consolidation had occurred triggering Section 404(b) requirements. The court found that this section's requirements were not triggered. However, the court's reasoning is telling. "In this instance, public services will at the very least remain substantially the same. All of the local post offices in question will remain in existence; the postmasters and most of the postal employees will retain their positions; letter carriers will sort and arrange the items for delivery within their own routes, as before; the public can still purchase

stamps and money orders, and register, certify or insure their mail." *Id.* at 805. *See also Citizens for the Hopkins Post Office v. United States Postal Service*, 830 F.Supp. 296, 299-300 (D. S.C. 1993) (transfer of mail-casing operation did not constitute a consolidation since post remained in existence and public could still obtain all services previously obtained); *Hall v. United States Postal Service*, 2010 WL 4026128 (N.D. Ohio 2010) (transfer of casing operations and some, but not all employees does not constitute a consolidation since subject post office would remain open for retail services)<sup>3</sup>

As discussed, the procedures and standards that the USPS must follow when closing or consolidating a facility are dramatically different than when the USPS is merely relocating a facility. For instance, when closing or consolidating a post office, the USPS must "provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views." 39 U.S.C. §404(d)(1). In deciding whether to close or consolidate a post office, among other findings, the USPS must consider:

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<sup>3</sup> In asserting that this Commission lacks jurisdiction in this matter since it is not a closure or consolidation, but is instead a relocation, both the USPS and the Public Representative rely on prior decisions of this Commission. However, neither USPS nor the Public Representative addresses the significant body of case law which supports the opposite conclusion. Additionally, the Commission decisions that they rely upon are factually distinguishable from the case at bar.

Moreover, the USPS is not unaware of these contrary judicial decisions. When responding to comments received on USPS's proposed changes to its regulations in 2011, USPS acknowledged certain of these judicial decisions, but characterized them as dated. *See* 76 FR 66184. With this the City disagrees. Moreover, while the City agrees with USPS that construction of a statute by the agency charged with administering is entitled to considerable deference, that construction must be reasonable. *See Citizens for the Hopkins Post Office*, 830 F. Supp. at 298-99. "A court is not obligated to accept every interpretation offered by an administering agency, because courts remain the ultimate arbiters on issues of statutory construction. This court will accord an agency's interpretation the deference to which it is entitled, but it will not abrogate its responsibility to deny an interpretation which is inconsistent with a statutory mandate or which would frustrate the congressional policy underlying the statute." *Id.* (citations omitted). It is unreasonable to construe §404 not to encompass the circumstances here -- the termination of all services at the 5<sup>th</sup> Street Post Office and the sale of that property.

- (i) the effect of such closing or consolidation on the community served by such post office;
  - (ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;
  - (iii) the economic savings to the Postal Service from such closing or consolidation; and
  - (iv) such other factors as the Postal Service determines are necessary.
- 39 U.S.C. §404(d)(2)(A).

The Decision does not address these factors, and as such, it cannot stand. Indeed, had the USPS properly assessed the evidence in light of the requisite findings, its conclusion would have been dramatically different. The 5<sup>th</sup> Street Post Office is located in the heart of Santa Monica's Downtown in a highly accessible location. The proposal to close the 5<sup>th</sup> Street Post Office and consolidate its operations at the Annex would place retail services in a more remote area with inconvenient access. Closing the Downtown location and consolidating service at the Annex building would have a particularly adverse effect upon seniors and the transit dependent.

- Walking: Thousands of people can easily walk to the current 5<sup>th</sup> Street Post Office since it is central to a densely populated area of residents, employees and visitors. The 7<sup>th</sup> Street location is nearly ¾ of a mile away, a challenge for people with mobility limitations. The remote location of the Annex in an industrial area also lacks "eyes on the street" which presents concerns for pedestrians, particularly for the elderly.

- Transit: The 5<sup>th</sup> Street location is well-served by multiple and frequent local and regional bus lines that provide service within a block of the 5<sup>th</sup> Street post office. The USPS response, dated October 1, 2012, contains a factual error in defense of the transit service to the Annex by stating that the Annex is accessible by public transit since “a bus station is directly across the street.” The facility across the street is a bus maintenance facility. There is no service to the public provided from this facility, and the fact that it is a maintenance facility serves as an indication of the industrial nature of the area.
- Driving: The Annex site is surrounded by infrastructure constraints that will lengthen vehicle trips, add to downtown congestion and make access inconvenient for patrons driving to the post office. The Annex building is cut off by I-10 freeway to the south, is located across the street from the Big Blue Bus Maintenance Facility/Bus Yard to the west, and bordered by the future at-grade light rail line to the north, which will operate on Colorado and is slated to cross 7<sup>th</sup> Street every 2 ½ minutes during the peak hours.

The Santa Monica City Council has adopted a citywide policy direction to create walkable and complete neighborhoods where the needs of daily life are within walking distance in order to promote public health and to reduce vehicle emissions and traffic congestion. These daily needs include the post office, particularly because many Santa Monicans visit the site daily to retrieve mail in the post office boxes. Closure of the 5<sup>th</sup> Street Post Office conflicts with local policy and obstructs achievement of statewide air quality and public health goals.

Additionally, the 5<sup>th</sup> Street Post Office is a historic resource that should stay in public ownership with full public access. Built in 1939 as part of the Works Progress

Administration, the original murals depict the history of coastal Santa Monica and are an integral part of the community. As a public monument and gathering place, the building should continue its civic function and remain open as a postal office to preserve both its civic and historic features. While recognizing that the 5<sup>th</sup> Street Post Office is a historic resource, the USPS has failed to articulate how it has complied with Section 106 of the general provisions of the National Historic Preservation Act, 16 U.S.C 470, *et seq.*, Executive Order 12072, and Executive Order 13006.<sup>4</sup> The USPS owes the public such an explanation.

On August 14, 2012, the Santa Monica City Council unanimously voted that the 5<sup>th</sup> Street Post Office remain open to the public and continue to provide retail and mail services. The City maintains that the 5<sup>th</sup> Street Post Office, essential to the City's identity and operation, should remain open to the public with its current function as a postal facility, and that the building should not be closed and sold. Postal services should not be consolidated with the Annex building because it would have major adverse effect on our community and on the postal customers, particularly seniors and transit dependent people. The building should remain in postal service ownership to protect its historic character and civic function.

The City well-understands that the USPS has broad authority in postal management. And, the City understands the economic exigencies of the moment. However, neither consideration empowers the USPS to ignore its obligation to proceed in accordance with mandatory procedural requirements. The government cannot ignore the law. The USPS has clearly done just that in the case at bar. For all these

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<sup>4</sup> As also discussed in Congressman Waxman's appeal, USPS entirely failed to disclose to the community information about the economic savings resulting from the closing and consolidation. See Appeal, p. 2.



reasons, the Commission should set aside the Decision and order that the entire matter be returned to the USPS for further consideration as required by 39 U.S.C. §404(d).

Respectfully submitted,

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By:   
BARRY A. ROSENBAUM  
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Attorneys for City of Santa Monica

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Santa Monica Post Office  
Santa Monica, California

Docket No. A2013-1

PUBLIC REPRESENTATIVE RESPONSE IN SUPPORT OF  
UNITED STATES POSTAL SERVICE MOTION  
TO DISMISS PROCEEDINGS

(October 26, 2012)

Pursuant to 39 CFR 3001.21 of the Commission's Rules, the Public Representative hereby responds in support of the Postal Service's motion to dismiss the appeal of the Postal Service's decision to relocate retail and post office box delivery service at its Santa Monica, California Post Office.<sup>1</sup>

I. PETITION FOR REVIEW

The Commission received a Petition for Review (Petition) by letter dated September 20, 2012, from United States Congressman Henry A. Waxman (Petitioner). The Petitioner is Representative of California's 30<sup>th</sup> District which includes the City of Santa Monica. The Petition states that the Postal Service has determined to close the 5<sup>th</sup> Street retail office in Santa Monica and "consolidate" its operations with the Santa Monica Carrier Annex located on 7<sup>th</sup> Street in Santa Monica. The Postal Service plans to sell the historic building on 5<sup>th</sup> street.

Section 404(d)(5) of title 39 provides the Commission authority to review decisions of the Postal Service to close or consolidate post offices. Petitioner argues that the Postal Service's action constitutes discontinuance since the Postal Service's

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<sup>1</sup> Motion of United States Postal Service to Dismiss Proceedings, Docket No. A2013-1. October 19, 2012. (Motion to Dismiss).

Handbook PO-101 defines discontinuance as an action where a Post Office is permanently closed or consolidated. Petition at 1. The Petition states the decision to close the facility failed to comply with regulations for post office discontinuances. 39 CFR 241.3. In particular, Petitioner claims the Postal Service failed to comply with the requirements of the rules relating to notice to the community, the effect on the community, and economic savings. *Id.* at 1-2.

Petitioner states the Postal Service did not provide 60-day notice of the proposed closure. *Id.* at 1. Petitioner also claims the Carrier Annex on 7th Street is remotely located and surrounded on three sides by highways and a bus maintenance facility and that pedestrians would have to cross a light rail track to get to the Carrier Annex. It says the community did not receive information about the estimated economic saving from the relocation. The Petition also notes the Postal Service's policy that any facility projects are to comply with the provisions of the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, as well as two Presidential Executive Orders. It says the Postal Service has failed to demonstrate how it will comply with that policy. *Id.* at 2. The Petition also requests the Commission to suspend efforts to close the 5<sup>th</sup> Street Post Office pending the outcome of the appeals process. *Id.* at 3.

The Commission instituted this proceeding to consider the Petition and established October 19, 2012 as the deadline for the Postal Service to file the applicable Administrative Record for this appeal and to file any responsive pleading.<sup>2</sup> On October 19, 2012, the Postal Service filed its Motion to Dismiss, but did not file an Administrative Record.

## II. POSTAL SERVICE MOTION TO DISMISS

The Postal Service's Motion to Dismiss argues that its decision to move retail postal services from the Santa Monica Post Office located on 5<sup>th</sup> Street, within one mile of the Santa Monica Carrier Annex, is a relocation (rather than a discontinuance) of the

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<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 10, 2012.

Santa Monica 5<sup>th</sup> Street Post Office. Motion to Dismiss at 2. The Postal Service states the new location will offer the same level of service at reduced cost. *Id.* at 8. While the Petition states the 5<sup>th</sup> Street Post Office has “plenty of parking,” Petition at 2, the Postal Service states the Carrier Annex will provide on street parking whereas the “current location does not have customer parking.” Motion to Dismiss, Exhibit 3 at 2. The Postal Service points out that 39 U.S.C. 404(d)(5) is limited to discontinuances of post offices and not relocations and cites to several Commission orders for support. The Motion to Dismiss concludes the relocation “falls outside the scope of 39 U.S.C. 404(d)(5)” and, accordingly, the Commission “lacks subject matter jurisdiction and should dismiss the appeal.” *Id.* at 1-2.

### III. DISCUSSION

A Postal Service determination to “close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission.” 39 U.S.C. § 404(d)(5). It is well settled that Commission jurisdiction arises only where, the Postal Service’s action constitutes either a “closing” or a “consolidation.” If the action is to relocate a post office, the Commission does not have authority to consider the merits of the appeal.

A series of factually similar Commission cases, most of which are cited by the Postal Service, support its Motion to Dismiss. *Id.* at 5-8. The Commission has long held that a relocation of retail postal operations from one facility to another within the community does not constitute, as a matter of law, a “closing” or “consolidation” for purposes of section 404(d). The following Commission orders are illustrative:

- Docket No. A2012-17, *Venice*, Order Granting Motion to Dismiss, Order No. 1166, January 24, 2012. (Ruling that 39 U.S.C. §404(d) did not apply where the transfer of retail operations to a carrier annex 400 feet away was a relocation of retail services).
- Docket No. A2011-21, *Ukiah*, Order Granting Motion to Dismiss, Order No. 804, August 15, 2011. (Ruling that 39 U.S.C. § 404(d) did not apply

where the transfer of retail operations to a carrier annex one mile away from the main post office was a relocation of retail services);

- Docket No. A2010-2, *Sundance Post Office-Steamboat Springs*, Order Dismissing Appeal, Order No. 448, April 27, 2010. (Ruling that 39 U.S.C. § 404(d) did not apply where the transfer of retail operations to a facility within the same community constituted a relocation or rearrangement of facilities).
- Docket No. A2007-1, *Ecorse Classified Branch*, Order Dismissing Appeal on Jurisdictional Grounds, Order No. 37, October 9, 2007. (Ruling that 39 U.S.C. §404(d) did not apply where the new retail facility was 1.7 miles away in the same community).
- Docket No. A86-13, *Wellfleet*, Order Dismissing Docket No. A86-13, Order No. 696, June 10, 1986. (Ruling that 39 U.S.C. § 404(d) did not apply where the new location was within communities roughly 2-3 miles apart with no defined borders and the new location was 1.2 miles away from the former location)<sup>3</sup>;
- Docket No. A82-10, *Oceana Station*, Order Dismissing Docket No. A82-10, Order No. 436, (June 25, 1982. (Ruling that 39 U.S.C. § 404(d) did not apply where the new location was four miles away from the former location).

These decisions support the conclusion that the relocation of retail services or rearrangement of retail facilities within a community does not constitute a closing or a consolidation—a prerequisite for an appeal under Section 404(d).

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<sup>3</sup> The *Wellfleet* Order is instructive as it defines “closing a post office” as used in the statute as the elimination of a post office from a community. It further defines “consolidation” as a change in the management structure of a post office which includes the elimination of the postmaster position. Order No 696 at 2. Neither applies in this case.

Although an appeal to the Commission is precluded by law, the community of Santa Monica has not been without opportunity to comment on the planned relocation. The regulations requiring specific Postal Service procedures for relocations are set out in 39 CFR 241.4. It appears the Postal Service has complied with those requirements. The Postal Service provided initial notice on August 15, 2012 of its decision to relocate retail services and thereafter considered requests for review of the decision from the City of Santa Monica, the Santa Monica Conservancy, the Wilshire Montana Neighborhood Coalition, the Los Angeles Conservancy, the North of Montana Association, and about 40 postal customers. Motion to Dismiss, Exhibit 3 at 1. The Postal Service subsequently issued a written Corrected Final Decision dated October 4, 2012, taking the views of the community into account. It also concluded that the National Historic Preservation Act (NHPA) is not applicable until the Postal Service's action results in an "undertaking" that changes the character or use of building at 5<sup>th</sup> Street. The Postal Service explained that an "undertaking," will not occur until the Postal Service transfers the property to private ownership.

Given the lack of jurisdiction over appeals of post office relocations, the Commission does not need to reach the Postal Service's point that the Petitioner did not demonstrate the jurisdictional prerequisite requiring Petitioner to be a "person served by such office." *Id.* at 1-2.

#### IV. CONCLUSION

For the reasons stated above, for lack of subject matter jurisdiction the Commission should grant the Motion to Dismiss and reject the request to suspend the relocation pending conclusion of the appeal.

Respectfully Submitted,

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Public Representative

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